

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8

LUTHERAN ORPHANS AND OLD FOLKS HOMES,
d/b/a LUTHERAN VILLAGE AT WOLF CREEK¹

Employer

and

Case No. 8-RC-17033

UNITED FOOD AND COMMERCIAL WORKERS
UNION, LOCAL 75

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon petition for election filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.² The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

All full-time and regular part-time charge nurses employed by the Employer at its 2001 Perrysburg-Holland Road, Holland, Ohio facility excluding all office clerical employees, RN supervisors, wellness nurses, admissions nurses, nursing unit managers, MDS nurses, activities assistant managers, dietary assistant managers, social workers, dieticians, chaplains, medical records clerks, supply clerks, contingent employees, and guards,

¹ The Employer's name appears as amended at the hearing.

² The hearing officer's rulings at the hearing are free from prejudicial error and are affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter. The labor organization involved claims to represent certain employees of the Employer, and a question affecting commerce exists concerning representation of certain employees within the meaning Section 9(c)(1) and Section 2(6) and (7) of the Act. The parties have filed post-hearing briefs which I carefully considered.

professional employees and supervisors as defined by the Act.

There are approximately 23 employees in the unit found to be appropriate.

I. THE ISSUES

- A. The main issue in this case is whether the petitioned-for charge nurses are statutory supervisors within the meaning of Section 2(11) of the Act. The Employer, contrary to the Petitioner, argues that these charge nurses are supervisors and, therefore, the petition should be dismissed.
- B. A secondary issue is the placement of RN Supervisor Lori Holly and Unit Manager Emily Palmer, individuals who also regularly work as charge nurses. The Petitioner maintains that Holly and Palmer should be excluded from the unit because of their other positions with the Employer. The Employer's position appears to be that if the other charge nurses are found not be statutory supervisors, then these two individuals should also be eligible to vote in any election.

II. DECISION SUMMARY

I conclude that the Employer has failed to meet its burden of establishing that the charge nurses are supervisors within the meaning of Section 2(11) of the Act. I also find that Emily Palmer is not eligible to vote in the election directed herein because she regularly serves as a statutory supervisor in her capacity as a unit manager. I further find that Lori Holly is eligible to vote as a dual-function employee who has a community of interest with other charge nurses.

III. FACTS

A. Overview of the Employers Operations³

The Employer is engaged in the operation of an extended care facility, providing health care services to the seniors. The retirement campus includes 80 independent living units, 79 assisted living units and a two floor nursing facility with 135 skilled nursing beds.

The first floor of the nursing facility is generally occupied by short-term residents who require a higher degree of clinical care services. Long-term geriatric residents are

³ At the hearing, the Employer's witnesses included Executive Director Bonnie Stepanian, Human Resource Director Jillian Fry, Staff Development Coordinator Amy Powell, R.N.; First Floor Unit Manager, Jason Brendel, R.N.; and Second Floor Unit Manager, Emily Palmer, LPN. The Petitioner's witnesses were charge nurses Kathleen Jones, LPN and Eva Thebeau, LPN.

primarily located on the nursing facility's second floor. Each floor is divided into three hallways. At full capacity, each hallway contains 23 residents.

Bonnie Stepanian, the Employer's Executive Director, is responsible for the entire campus.⁴ The Assistant Administrator reports to Stepanian and is responsible for both the assisted and independent living components of the campus. Prior to January 2008, the nursing care hierarchy consisted of the Director of Nursing, Assistant Director of Nursing, charge nurses⁵ and state tested nursing assistants (STNAs).⁶

In January 2008, the Employer instituted significant changes to the hierarchy of the nursing facility. To this end, the nursing unit was restructured to provide a rehabilitative capacity. As part of the restructuring, the Employer eliminated the assistant director of nursing position, but created six RN Supervisor positions and two Unit Manager positions.⁷

At the time of the hearing, five of the six RN Supervisor positions were filled by Becky Kiefer, Amanda Hazard, Laura Grotlaw, Melisa Prudent and Lori Holly. Holly works one 12 hour RN Supervisor shift per week and two day turn shifts as a charge nurse. The first floor Unit Manager is Jason Brendel, RN and the second floor Unit Manager is Emily Palmer, LPN. They each work day-time hours as unit managers. Palmer also works two 8 hour shifts on alternating weekends as a charge nurse.

The primary responsibility of the RN Supervisors is the delivery of complex skilled and rehabilitative care. No employees report to them. Unit Managers supervise the charge nurses. The Employer asserts that charge nurses are responsible for their unit, including the supervision of the direct care providers, STNAs.

The Employer employs approximately 70 regular full-time and part-time STNAs. Two STNAs are scheduled per hallway for the day and evening shifts. There is normally one STNA scheduled per hall during the night shift. A varying number of STNAs are also scheduled to "float" to different areas of the facility. STNAs, like charge nurses, are scheduled to eight hour shifts and paid on an hourly basis.

IV. ANALYSIS

⁴ Prior to assuming the position of Executive Director, Stepanian was employed as the Assistant Administrator.

⁵ I note that the Employer sometimes hires individuals with RN licenses to work as charge nurses, even though this position does not involve the performance of RN duties. As noted elsewhere herein, at present, all the charge nurses are LPNs with one exception; Lori Holly. Since the charge nurse classification is clearly not professional in nature and the RNs who hold the position from time to time are not acting in their professional capacity while working in this classification, I find no issue is raised regarding a self-determination election within the meaning of Section 9(b)(1) of the Act. Aeronca, Inc., 221 NLRB 326 (1975).

⁶ According to Stepanian, the nursing unit also included a restorative nurse and quality control.

⁷ It is undisputed that this organizational change did not alter the duties and responsibilities of charge nurses.

A. Factors Relevant to Analyzing Supervisory Status

The burden of establishing an employee's supervisory status is on the party asserting that such status exists. NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 711 (2001), Oakwood Healthcare Inc., 348 NLRB 686, 687 (2006). Supervisory status must be established by a preponderance of the evidence. Dean & DeLuca, 338 NLRB 1046, 1047 (2003). The Board has repeatedly held that mere assertions of authority are not sufficient to establish supervisory status. Chevron U.S.A., 309 NLRB 59, 62 (1992). Rather, the Board requires evidence that the individual actually possessed supervisory authority. Golden Crest Healthcare Center, 348 NLRB 727 (2006). Moreover, where the evidence is in conflict or otherwise inconclusive on particular indicia of supervisor authority, the Board will find that supervisory authority has not been established. Dole Fresh Vegetables Inc., 339 NLRB 785, 792 (2003), Phelps Community Medical Center, 295 NLRB 486, 490-491 (1989). The sporadic exercise of supervisory authority is not sufficient to transform an employee into a supervisor. Kanahwa Stone Co., 334 NLRB 235, 237 (2001), Gaines Electric Co., Inc., 309 NLRB 1077, 1078 (1992).

Section 2(11) of the Act defines a supervisor as:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 2(11) of the Act sets forth a three part test for determining whether an individual is a supervisor. Pursuant to this test, an employee's supervisory status is established if: (1) he or she has authority to engage in any 1 of the 12 listed supervisory functions, (2) the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment and (3) the authority is held in the interest of the employer. See NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 712-713, (2001), NLRB v. Healthcare & Retirement Corp. of America, 51 U.S. 571, 573-574 (1994).

Supervisory status may be established if the individual has the authority to effectively recommend one of the supervisory criteria. However, the authority to effectively recommend an action means that the recommended action is taken without independent investigation by superiors, not merely that the recommendation is thereafter followed. See Children's Farm Home, 324 NLRB 61 (1997), Hawaiian Telephone Co., 186 NLRB 1 (1970). Ultimately, the Board has a duty not to construe the statutory language of Section 2(11) too broadly because an individual found to be a supervisor is denied protection under the Act. Avante at Wilson, Inc., 348 NLRB 1056, 1058 (2006),

Chevron Shipping Co., 317 NLRB 379, 381 (1995), Hydro Conduit Corp., 254 433, 437 (1981).

B. Charge Nurses Do Not Possess Any Indicia of Supervisory Authority

The Employer's arguments in support of its claim of supervisory status focus on claims that these individuals have (1) the authority to change the work hours and assignments of STNAs, (2) responsibly direct the work of STNAs, (3) discipline STNAs, (4) approve temporary pay increases for STNAs when then serve as mentors to co-workers and (5) have a significant role in the Employer's attendance policy.

(1) Assignment and Scheduling of Work

Under the Employer's staffing system, STNAs are hired to work a particular shift on specific days and at a designated location, such as even numbered rooms in one of the six hallways. The Human Resource Director schedules both STNAs and charge nurses and posts the separate schedules in the lunchroom. While acknowledging that charge nurses can not make permanent changes to the STNA schedule, the Employer argues that charge nurses have the authority to make day-to-day reassignments of STNAs. These adjustments occur due to call-offs, an increased need in a particular area of the facility or to accommodate resident preferences. Unit Manager Palmer testified that charge nurses have the authority to move a "floating" STNA to their hallway to ensure that all residents' needs are met or to switch STNAs from one room or side of a hall to another to accommodate a resident or family member preference.

The Employer also contends that charge nurses exercise the authority to assign STNAs to work beyond the hours of their shift, to call in off duty STNAs and, when necessary, to contact agencies that provide temporary staff to fill vacancies in the schedule. Several of the Employer's witnesses testified that charge nurses do not require authorization to ask for STNA volunteers in such circumstances, even when overtime expenses would result. While STNAs may elect to work extra hours when asked by a charge nurse, they are not required to do so. The two charge nurses who testified for the Petitioner were emphatic that they rarely, if ever, asked STNAs to come in or work over and had recently been instructed that they could no longer call outside employment agencies for extra help.

In concluding that the LPN charge nurses at issue do not assign work to STNAs using the requisite degree of independent judgment to establish supervisory status, I am guided by the Board's analysis in Oakwood HealthCare, Inc., 348 NLRB 686 (2006). The Board's discussion in Oakwood sets forth specific factors relevant in assessing the term "assign" as it applies to Section 2(11) of the Act. The Board defined the term "assign" to refer to the act of designating an employee to a place (such as location, department or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e. tasks, to an employee. The Board noted that to "assign" for purposes of Section 2(11) of the Act refers to charge nurse's

designation of significant overall duties and not just the charge nurse's *ad hoc* instruction to an employee to perform a discrete task, such as giving medication to a particular patient. Oakwood at 686.

The record in this matter establishes that at their hire, STNAs are assigned to particular shifts, on designated days at regularly assigned locations. The charge nurses do not prepare the schedules and have no input into this process. In addition, the charge nurses do not have the authority to require off-duty STNAs to come in or to require on-duty STNAs to stay late. Golden Crest Health Care Center, 348 NLRB 727 (2006). With regard to day to day assignment changes resulting from staffing necessity or resident preference, there is no evidence that charge nurses consider anything other than the needs of residents in reassigning STNAs. I find that this sporadic switching of STNA assignments by charge nurses due to call offs or resident preferences, more closely resembles an *ad hoc* instruction regarding a discrete task as opposed to a significant overall change of duties. Absent more detailed, specific evidence of independent judgment involved, the conclusory statements made on this issue by the Employer's witnesses are insufficient to establish supervisory status. Sears, Roebuck & Co., 304 NLRB 193 (1991).

(2) Responsible Direction

Several Employer witnesses, particularly Unit Manager Palmer, testified that charge nurses are responsible for delegating resident care duties to STNAs, the direct caregivers. In addition, Palmer testified that charge nurses were responsible for ensuring that STNAs completed their assigned tasks and for approaching STNAs, as necessary, if their performance fell short in any area of resident care.

In discussing the authority to responsibly direct other employees, using independent judgment, the Board in Oakwood at p. 691 stated: "If a person on the shop floor has men under him, and if that person decides what job shall be undertaken next or who shall do it, that person is a supervisor, provided that the direction is both responsible (as explained below) and carried out with independent judgment." The person directing how a task shall be accomplished must be accountable for its performance. The Board defined accountability as follows:

Thus, to establish accountability for purposes of responsible direction, it must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary. It also must be shown that there is a prospect of adverse consequences for the putative supervisor if he/she does not take these steps. Oakwood at 691.

To decide if an individual employs independent judgment, the evidence must show that this judgment is free of the control of others, the dictates of policy, or the terms of a collective bargaining agreement. There must also be evidence that the exercise of

judgment involves the forming of an opinion or evaluation by discerning and comparing factors or data. In other words, the judgment used by the putative supervisor must rise above the merely routine or clerical.

The evidence reveals that charge nurses spend very little time interacting with STNAs. Rather it is apparent that STNAs are familiar with their duties and generally require little guidance. Claims by Employer witnesses to the contrary are vague at best.⁸ While charge nurses, in some minimal sense, direct the STNAs in their performance of resident care, I conclude that this amounts to little more than routine guidance or follow-up. There is no evidence that the charge nurses use independent judgment to responsibly direct the work of STNAs. Croft Metals, Inc., 348 NLRB 717, 722 (2006).

(3) Claims Regarding Disciplinary Authority

The Employer introduced its Handbook containing its disciplinary system (Employee Exhibit 11), as well as its Policy on Abuse, Neglect, and/or Misappropriation of Resident Funds. (Employer Exhibit 4)

The Corrective Action Policy distinguishes between “Informal Coaching” and “Formal Corrective Action”. The Informal Coaching referenced in the Employer’s Handbook is currently referred to as an Educational Review. Employer Exhibit 5 includes 10 Educational Reviews, along with various Corrective Action documents.⁹ In its Handbook, the Employer indicates that “LVWC shall make a constructive effort to correct employee inefficiency and/or deficiency in the performance of resident care duties prior to initiating any formal disciplinary action.” (Emphasis added) The Educational Review documents in evidence reference such work deficiencies as mishandling a resident in a wheelchair, failing to remove soiled clothing and linens, failing to have a resident up, dressed and showered, call lights and alarms out of position, failure to immediately notify a charge nurse regarding a skin alteration and incomplete documentation. Educational Reviews do not contain a level of discipline, as by Handbook definition they are not disciplinary in nature, a point confirmed by the Employer’s witnesses. Accordingly, I find that the charge nurse role in completing these documents lends no support for the Employer’s position.

With respect to “Formal Corrective Action” the Handbook states that such discipline is progressive in nature and includes verbal warning, written warning, suspension and discharge. The Handbook includes a detailed multi-paged chart listing potential inappropriate behaviors and suggested guidelines for specific levels of discipline. However, the introductory paragraph of the Corrective Action section of the

⁸ While Palmer testified that a charge nurse had been held responsible and disciplined for the performance of a STNA, an examination of this exhibit (Employer Exhibit 6) revealed that the nurse was disciplined for her own mistakes and the exhibit was withdrawn by the Employer.

⁹ I have decided to accept this exhibit into evidence, even though it was rejected at hearing. I concluded that the record adequately establishes the authenticity of these documents as business records and they have sufficient relevance to warrant inclusion in the record.

Handbook states “Management will implement corrective action at the level it deems appropriate depending on the facts and circumstances of the behavior.”

The evidence regarding the charge nurses’ role in carrying out formal corrective action program is less persuasive than that Employer contends. Several examples of corrective action notices initiated and/or signed by charge nurses were introduced into evidence. However, there is no clear testimony regarding whether the charge nurse involved decided to carry out this action on their own or whether he or she was instructed to do so by a superior. At best, the record provides only one seemingly straight-forward example of then charge nurse Brendel issuing a corrective action without first checking with his superiors.¹⁰ But even Brendel admits that the normal practice is for a charge nurse to go to his or her superior about an issue with an STNA thus allowing the superior to determine what, if any, action to take.

Further, the record evidence does not clearly support the Employer’s contention that the issuance of corrective action reports is anything more than the writer’s making a factual report to a superior who then determines whether discipline is appropriate and, if so, what level. First, it is undisputed from the Employer’s handbook that the disciplinary guidelines set forth therein are only that: suggested guidelines. As noted above, the document is very clear that these guidelines maybe altered depending on the circumstances. It is equally clear that the person who makes determinations regarding when and if the guidelines apply is the HR director, not the charge nurse. It is undisputed that the charge nurse merely fills out the form, normally at the direction of a superior, recounting the facts of an incident and then submits the form to the HR director. The charge nurse occasionally checks the box on the form that states “verbal warning”, but they do not always do so. The reason for this is clearly because the charge nurse has no idea whether this will result in discipline being issued or what level of discipline if it is. The charge nurse is never consulted thereafter regarding what action, if any, should be taken in the matter. On these facts, it can not be stated that the Employer has a disciplinary system that leads to a specific form of discipline solely based on the creation of one of these forms. To the contrary, the system appears to be very flexible, with the HR director exercising all the discretion and the charge nurse merely using the corrective action form to relay a factual report.

Therefore, the Employer’s reliance on Berthold Care Center, Inc., 351 NLRB 27 (2007) and Extendicare Homes Inc., 348 NLRB 1062 (2006) in support of its claim that the charge nurses role in completing corrective action forms constitutes evidence of supervisory authority is misplaced. In Berthold, the Board found persuasive the testimony that progressive disciplines initialed by LPNs ultimately lead to the discharge and suspension of two employees. In Extendicare the Board found the LPNs in question were vested with authority to decide whether to write up employees or refrain from doing so. Moreover, the Board noted that the write-ups placed in the personnel files played a significant role in the Employer’s disciplinary process. In the instant case, the record

¹⁰ I find this one example to be far from conclusive as (1) it is conspicuous in its apparent uniqueness and (2) there is no clear evidence that it truly constituted more than a factual report to the HR director who then determined the level of discipline.

does not establish that the Employer's charge nurses routinely exercise independent discretion to determine whether to issue corrective actions or the issuance of such reports necessarily leads to more serious discipline. Accordingly, I deem this matter more like those where the evidence failed to establish that the nurses' role in discipline was anything more than preparing reports regarding misconduct without the ability to effectively recommend discipline. Michigan Masonic Home, 332 NLRB 1409 (2000), Green Acres Country Care Center, 327 NLRB 257 (1998). To the extent that the Employer produced testimony to the contrary, I deem this evidence to be too conclusory and lacking in specificity to meet the burden of demonstrating supervisor status. Lynwood Manor, 350 NLRB 489 (2007).

There is also testimony that charge nurses are authorized to issue crisis suspensions; that is, the ability to send employees home for serious misconduct followed by an independent investigation by higher authority. I note that the Handbook categorizes a Crisis Suspension as separate from the formal corrective action steps of verbal warning, written warning, suspension without pay and discharge. According to the Handbook, "When an employee's behavior is so serious that immediate removal from the workplace is necessary, a crisis suspension will be given, pending investigation". Current Charge Nurse Thebeau described two crisis suspensions during her 10 year tenure. One involved an STNA sleeping on the job and the other involved loud, profane, combative STNAs arguing in a resident area. Thebeau testified that in these instances, she wrote a nurse's note to her supervisor and was not further involved in the investigation.

I note that the authority to send employees home in situations limited to flagrant and egregious conduct generally does not constitute supervisory action. Vencor Hospital-Los Angeles, 328 NLRB 1136, 1139 (1999).

Accordingly, I do not find that the Employer's arguments regarding the charge nurses' alleged role in discipline persuasive on the issue of their supervisory status.

(4) Claims Relating to Other Indicia of Supervisory Status

The Employer pays an hourly premium to employees, including STNAs, who act as a mentor to new hires. The Employer notes that in order to receive the pay premium, a mentor pay request must be signed by a "supervisor". This form contains the name of the employee requesting mentoring pay, the date the mentoring and the party mentored. At the bottom of the form are signature lines for approval by a supervisor, as well as by the Director of Nursing. While there is no dispute but what charge nurse's occasionally execute Request for Mentoring Pay forms, I am not persuaded this constitutes evidence of supervisory authority. The execution of these pay override documents is a ministerial act. By signing, the charge nurse merely verifies that the STNA served as a mentor for a new hire.

The Employer argues further that the charge nurse's role in authorizing employee pay in other instances provides additional support for their argument. A "green slip" is

utilized whenever an employee fails to clock in or out for any reason. Utilizing this form, an employee lists what their punch in and/or punch out times should be for purposes of correcting their actual hours. The form includes signature lines for the employee and a supervisor. The Employer provided four examples of green slips signed by charge nurses. (Employer Exhibit 9) The Employer maintains that charge nurses exercise supervisory authority when they sign these forms. The Employer argues that green slips signed by charge nurses are not questioned, but automatically accepted for payment. However, HR Director Fry acknowledged that an RN Supervisor would be the first person to be asked to approve an employee's green slip. According to Fry, approximately 60 green slips are executed each pay period. Charge Nurse Jones testified that it was rare for charge nurses to sign green slips.

The Employer also points to the charge nurses' role in completing another form called the Report of Employee Absence, or call off report as supportive of its position. This form lists the employee's name, department, title, shift, date of absence, time call taken, reason and a signature line for the person who took the call. Below this information is a supervisory signature line and date. While the documentation submitted into evidence reveals that charge nurses occasionally signed on the line indicating that they received the call off, they did not sign on the supervisor signature line. While several of the forms contained no supervisory signature, the majority were signed by RN supervisors. Current charge nurses Jones and Thebeau testified that former Director of Nursing, Ferguson instructed charge nurses that they were not authorized to take call-offs under any circumstances. Ferguson currently holds the position of the Director of Clinical Compliance at the Holland facility, but she did not testify at the hearing.

Consistent with my conclusions regarding the execution of mentor request forms, I find that the evidence that charge nurses have completed green slips and call off reports does not transform them into supervisors. The documentary evidence establishes that charge nurses have sporadically sign off on these forms in the absence of RN Supervisors and Unit Managers. I note that the charge nurses do not approve or disprove absences for purposes of the Employer's attendance policy, but merely record that an absence of some sort has been reported. The same is true in regards to the green slips; the charge nurse merely confirms that the person was present at work during the time noted. Initialing or signing off on such forms has long been deemed ministerial or clerical by the Board, rather than supervisory, and I find no basis for reaching a different conclusion on these facts. Healthcare and Retirement Corp. of America, 306 NLRB 63 (1992).

The Employer claims that the charge nurses have input into the evaluation of STNAs, although this is limited and sporadic at best. Regardless, this is of no significance as these evaluations admittedly have no impact of employee pay or status. Williamette Industries, 336 NLRB 743 (2001).

The Employer further argues that there are periods of time, particularly in the evenings, when charge nurses are the highest authority figures present at the facility. The Board views such evidence as having little or no weight in an evaluation of supervisory status. Golden Crest Healthcare Center, 348 NLRB 727, 732, fn 10 (2006). Further, the

Employer has not shown that the charge nurses act independently on those occasions or whether a superior is available by phone in the event of problems occur, a significant distinction in such cases. St. Francis Medical Center-West, 323 NLRB 1046,1047 (1997).

Finally, I note that charge nurses were recently (February 2010) given verbal instruction during a meeting that they were expected to “discipline” STNAs as needed. While the Employer would have me give great weight to this evidence, I find it of little probative value. This vague statement could well mean nothing more than the Employer expects the charge nurses to issue more factual reports about the conduct of STNAs (which the HR director then reviews and acts on) or it could mean that the charge nurses were expected to take some other role in the oversight of STNAs. However, there is nothing in the record to indicate that this announcement lead to any meaningful change in the duties and responsibilities of charge nurses. The granting of such “paper” authority is of no probative value. Training School of Vineland, 332 NLRB 1412,1416 (2000).

In view of the above and the record as a whole, I find that the Employer has not met its burden of establishing that employees in the petitioned-for unit are supervisory employees within the meaning of Section 2(11) of the Act. Pine Brook Care Center, 322 NLRB 740 (1996).

Finally, with respect to the placement of Unit Manager Emily Palmer, I conclude that she should be excluded from the unit. Palmer works Monday thru Friday in her capacity as an admitted supervisor. In addition, she works 16 hours as a charge nurse every other weekend. As Palmer regularly work for a substantial period of time in a supervisory positions, I find that her are ineligible to vote in the election directed herein. Oakwood at 694. Lori Holly’s eligibility presents a different issue. While she is an RN, her primary job is to work as a charge nurse, performing only the duties of that position as exercised by the LPNs who predominate. However, in order to assist the Employer with a short staffing situation, she also works one 12 hour shift per week as an RN supervisor. I note that the record fails to establish that the RN supervisor position is “supervisory” within the meaning of the Act, although is it is clearly a professional position. Based on the above, and the record as a whole, I find that Holly is a dual-function employee, working both as a professional employee, while performing as RN supervisor, and a non-professional/non-supervisory employee while performing her charge nurse duties. Accordingly, she is eligible to vote in the election directed herein. Young Broadcasting of Los Angeles d/b/a KCAL-TV, 331 NLRB 323 (2006).

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work

during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike, who have attained their status as strikers and have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 75**.

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. **Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969)**. Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. **North Macon Health Care Facility, 315 NLRB 359 (1994)**. The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. If a party wishes to file a request for review electronically, guidance for E-Filing can be found on the National Labor Relations Board website at www.nlr.gov. On the home page of the website, select the E-Gov tab and click on E-Filing. Then select the NLRB office for which you wish to E-File your documents. Detailed E-Filing instructions explaining how to file the documents electronically can be displayed. This request must be received by the Board in Washington, by August 4, 2010.

Dated at Cleveland, Ohio this 21st day of July, 2010.

/s/ Frederick J. Calatrello

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8